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Security Council Committee established pursuant to resolution 1540 (2004)

Letter dated 16 January 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Chair of the Committee

I have the honour to refer to your letter dated 17 October 2007 and to transmit herewith additional information relating to the implementation by Switzerland of Security Council resolution 1540 (2004).

In reply to your request, I am also pleased to inform you that Switzerland does not object to the publication of this information on the Committee's website.

(*Signed*) Peter **Maurer**
Ambassador
Permanent Representative

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Annex to the letter dated 16 January 2008 from the Permanent Representative of Switzerland to the United Nations addressed to the Chair of the Committee

[Original: English]

Report of Switzerland to the Security Council Committee established pursuant to resolution 1540 (2004)

15 December 2007

1. Introductory remarks

Switzerland has the honour to respond to the letter S/AC.44/2007/ODA/OC.61 from the distinguished Chair of the Security Council Committee established pursuant to resolution 1540 (2004).

Switzerland would like to take this opportunity to solve any outstanding questions with regard to the implementation of resolution 1540 (2004) by Switzerland as reflected in the matrix. Switzerland is, of course, ready to clarify any possible misunderstandings and to provide information in even greater detail. At the same time, we note that the matrix provided by the 1540 (2004) Committee, which was established on the basis of the Swiss reports from 22 October 2004 (S/AC.44/2004/(02)/9) and 19 September 2005 (S/AC.44/2004/(02)/9/Add.1), states that no official Government information was provided regarding the columns "general statement on non-possession of weapons of mass destruction" and "general statement on commitment to disarmament and non-proliferation". However, these two commitments have been cornerstones of Swiss security policy for decades, and it is hard to see how a study of the Swiss non-proliferation record could not take into account the Swiss commitment to disarmament and non-proliferation.

Switzerland strongly affirms that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security. Switzerland also shares the concerns of the international community that easy availability of biological, chemical or nuclear materials may induce international terrorists to seek weapons of mass destruction (WMD) capabilities.

Switzerland is of the opinion that there is no substitute for the existing regime of multilateral treaties, and that multilateral efforts must continue to be the basis for work in the field of non-proliferation. Universal adherence, full implementation and, where necessary, a strengthening of the existing instruments, in particular in the field of verification and monitoring, are indispensable steps towards the elimination of all weapons of mass destruction.

The Swiss commitment to non-proliferation is set out in article 7 of the Federal Act on War Material of 13 December 1996 (War Material Act, SR 514.51). This article is fundamental to the understanding of Swiss non-proliferation legislation. It reads as follows:

Article 7 *Nuclear, biological and chemical weapons*

1. It is prohibited:

(a) to develop, produce, broker, acquire, transfer to anyone, import, export, carry in transit, or stockpile nuclear, biological or chemical weapons (NBC-weapons) or to possess them in any other way;

(b) to incite anyone to carry out an act mentioned in letter (a) above;

(c) to assist anyone in carrying out an act mentioned in letter (a) above.

This article is a key provision of Swiss non-proliferation legislation. It prohibits any action committed by any person who has any connection to the acquisition of WMD. In the Swiss understanding, this article notably also covers the following issues:

- prohibition of the delivery of WMD and related materials to non-State actors
- the aspects of financing of WMD acquisition, and
- the brokering of dual-use goods, if the case in point has a connection to WMD programmes.

2. General contribution of Switzerland to the fight against the proliferation of weapons of mass destruction and their means of delivery

2.1 International treaties and agreements

Switzerland is party to the following international treaties and conventions designed to combat the proliferation of nuclear, chemical and biological weapons:

- Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925.
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967.
- Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968.
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor in the Subsoil Thereof of 11 February 1971.
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972.
- Agreement between Switzerland and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 6 September 1978.
- Convention on the Physical Protection of Nuclear Material of 26 October 1979.

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- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993.
- Comprehensive Nuclear-Test-Ban Treaty of 10 September 1998.
- Switzerland also subscribed to the Hague Code of Conduct against Ballistic Missile Proliferation in 2002.
- Switzerland is a member of the Proliferation Security Initiative.

2.2 General contribution to the fight against terrorism

Terrorism in all its forms and manifestations has consistently been condemned by Switzerland, regardless of the reasons invoked to justify it. Perpetrators of terrorist acts must be brought to justice. Addressing the root causes of terrorism is, however, also an essential element for the prevention of terrorism. Switzerland is committed to effective international conventions in order to combat terrorism. It has ratified all 16 United Nations conventions related to the fight against terrorism.

In 2003, Switzerland adopted amendments to the Criminal Code, the Code of Criminal Procedure and due diligence legislation, which made the financing of terrorism subject to criminal prosecution. This allowed Switzerland to fully implement the International Convention for the Suppression of the Financing of Terrorism as well as the International Convention for the Suppression of Terrorist Bombings.

Switzerland supports the work of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and is engaged in an ongoing dialogue with the Committee on the measures to be taken in the global fight against terrorism. To this end, Switzerland has, to date, submitted four reports pursuant to paragraph 6 of resolution 1373 (2001) (S/2001/1224, S/2002/868, S/2003/967 and S/2005/161). Switzerland also supports the work of the Al-Qaida and Taliban Sanctions Committee established pursuant to Security Council resolution 1267 (1999) and submitted its corresponding report in 2003 (S/AC.37/2003/(1455)/44).

3. Implementation of Security Council resolution 1540 (2004)

3.1 Operative paragraph 1

Support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery

Switzerland does not provide any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. Such support would be in violation of Swiss legislation, the international obligations undertaken by Switzerland, and the principles of Swiss foreign and security policy in general.

3.2 Operative paragraph 2

Appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or

biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them

Under article 7 of the Swiss Federal Act on War Material, it is prohibited to develop, produce, broker, acquire, transfer to anyone, import, export, carry in transit, or stockpile nuclear, biological or chemical weapons or to possess them in any other way. According to article 34 of the Federal Act on War Material, violations of article 7 shall be punished with imprisonment of up to 10 years and fines of up to 5 million Swiss francs. It is also punishable to attempt to engage in any of the aforementioned activities or to participate in them.

Any assistance rendered to persons engaged in such activities is also prohibited. Article 7 is also applicable to offences committed abroad if they are in violation of rules of international law by which Switzerland is bound and if the offender is of Swiss nationality or domiciled in Switzerland.

Owing to its importance, article 34 of the Federal Act on War Material is set out below in full:

Article 34 *Offences against the prohibition of nuclear, biological and chemical weapons*

1. Any person who wilfully commits any of the following acts without being able to claim an exemption under article 7, paragraph 2, is liable to a term of penal servitude of up to 10 years or to a term of imprisonment:

(a) the development, manufacture, brokerage, acquisition, transfer to another, import, export, transit, stockpiling, or any other form of possession of nuclear, biological or chemical weapons;

(b) incitement to commit any of the acts listed under letter (a); or

(c) assisting in the commission of an act listed under letter (a).

2. A fine of up to 5 million francs may be combined with any custodial sentence.

3. If the act is committed through negligence, the penalty is imprisonment of up to 12 months or a fine of up to 500,000 francs.

4. An act committed abroad is an offence in terms of these provisions irrespective of the law of the place of commission if:

(a) it violates international law agreements to which Switzerland is a contracting party; and

(b) the offender is Swiss or is domiciled in Switzerland.

The International Convention for the Suppression of the Financing of Terrorism specifies that even attempted financing of terrorism within the meaning of the Convention shall be criminalized and that the financing of terrorism shall be prosecuted irrespective of whether the financial means were actually used for perpetrating one of the listed criminal acts.

Accordingly, article 260 quinquies of the Swiss Penal Code, which entered into force in 2003 provides for a penalty of up to five years of imprisonment for anyone who collects funds or makes them available with the intention of financing a violent criminal act aimed at intimidating a group of people or at forcing a State or international organization to carry out or refrain from carrying out any act.

In Switzerland, the preparation of a terrorist offence, membership or support of a terrorist organization and financing of acts of terrorism are, in all cases, punishable offences in themselves, even if no terrorist act has yet been committed or attempted. The acts of the persons involved are thus prosecuted whether they are planned or prepared on Swiss territory, on the territory of another State, or against foreign nationals.

3.3 Operative paragraph 3

Subparagraphs (a) and (b)

Appropriate effective measures to account for and secure nuclear, chemical or biological weapons, their means of delivery, and related materials in production, use, storage or transport and physical protection measures

Switzerland does not maintain any nuclear, chemical or biological weapons or their means of delivery. It ended its pilot chemical weapons programme at the end of World War II and destroyed all remaining agents. Switzerland has never undertaken nuclear or biological weapons production nor has it engaged in stockpiling their means of delivery.

Enterprises and institutions working with nuclear, chemical or biological material are subject to the reporting obligations and inspections provided for in the international instruments to which Switzerland is party.

Subparagraph (c)

Appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law

The purpose of the Swiss Federal Customs Act of 18 March 2005 (Customs Act; SR 631.0), as stated in its article 1, is the monitoring and control of persons and goods crossing the Swiss customs border. In Article 94, the customs authorities are tasked with the enforcement of all applicable international treaties and conventions to which Switzerland is a party, such as, for example, the Chemical Weapons Convention. In addition, the Swiss Federal Act on the Enforcement of International Sanctions (Sanctions Act; SR 946.231) allows the Swiss authorities to limit or prohibit trade with foreign States or entities in order to comply with sanctions decided upon by the United Nations, the Organization for Security and Cooperation in Europe or major trading partners of Switzerland.

Articles 114 and 115 of the Customs Act empower customs authorities to render assistance to other institutions, both foreign and domestic. Customs authorities are a part of the Swiss inter-ministerial export control group. Their risk analysis team receives regular online updates of risk profiles by the export control authorities, federal police and intelligence services.

Subparagraph (d)

Appropriate effective national export and trans-shipment controls over nuclear, chemical or biological weapons, their means of delivery, and related

materials, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations

Export: Switzerland has extensive legislation covering exports of dual-use items

The majority of the relevant provisions are included in the Federal Act on the Export, Import and Transit of Dual-use Goods and Specific Military Goods (Goods Control Act; SR 946.202). The corresponding Ordinance on the Export, Import and Transit of Dual-use Goods and Specific Military Goods (Goods Control Ordinance; SR 946.202.1) contains, in its annex 2, the complete control lists of the four legally non-binding international export control regimes. Moreover, the three schedules of chemicals controlled by the Chemical Weapons Convention are contained in annex 1 of the Ordinance on the Control of Dual-use Chemicals (Dual-use Chemicals Ordinance; SR.946.202.21).

The catch-all clause contained in article 4 of the Goods Control Ordinance is used extensively by the Swiss authorities. This clause states that planned export of goods that are not subject to licence requirements must be reported if the exporter knows or has been notified by the licensing authority that the goods are intended or could be intended for the development, production or use of nuclear, biological or chemical weapons or of related delivery systems.

The legislation requires exporters to apply for an export licence for certain sensitive goods listed in the annexes to the ordinances, in accordance with the control lists of the non-binding international export control regimes and the Chemical Weapons Convention. Exports are denied if they might be contributing to WMD or missile programmes or if they violate international agreements or sanctions. They are further denied if there is reason to believe that the export would support terrorist groups or organized crime.

Individuals or legal entities who apply for an export licence have to provide all information to the authorities and submit the necessary documentation for a comprehensive evaluation or control. The requested documentation includes company profiles, confirmation of orders, sales contracts or customer bills, exporters' end-use statements, import certificates of the country of destination and consignees' end-use statements. Trading companies will generally not receive deliveries unless they can provide a viable statement of end-use by an industrial company.

Switzerland uses all available sources to establish the legitimacy of a potential end-user. In particular, intelligence assessments and information from partners and other members of export control regimes are taken into account. In addition, the risk report and other open-source material is considered.

Switzerland also requires a statement of end-use from the exporter detailing the latter's knowledge of the end-user. In cases where fixed equipment is installed, the export control authorities may require the exporter to provide an installation report.

End-user statements are routinely required. If, based on all available information, it cannot be determined that the end-user conducts legitimate business, an export will be strongly called into question.

Pursuant to article 14 of the Goods Control Act, a prison sentence or a fine of up to 1 million francs shall be imposed on anyone who fails to comply with the legislation governing dual-use goods.

Transit: Controlled dual-use goods may not be transported through Swiss customs territory if the shipment is not proven to be in accordance with the relevant regulations of the country of origin. If there is reason to believe that the transit violates international control measures adhered to by Switzerland, the transit is prohibited.

End-use statements contain a clause prohibiting in general the re-export of goods to third countries without the consent of the Swiss export control authorities.

According to article 14 of the Goods Control Act, a prison sentence or a fine of up to 1 million francs shall be imposed on anyone who "has goods delivered or passed on to or brokered for a person other than the end purchaser or final destination stated in the licence".

3.4 Operative paragraph 6

Effective national control lists

As mentioned above, exports of weapons and dual-use goods are subject to Swiss export control legislation. Annex 2 of the Ordinance on the Export, Import and Transit of Dual-use Goods and Specific Military Goods (SR 946.202.1) contains the complete control lists of the export control regimes that deal with dual-use items: the Nuclear Suppliers Group, the Missile Technology Control Regime, the Australia Group and the Wassenaar Arrangement. Moreover, the three schedules of chemicals controlled by the Chemical Weapons Convention are contained in annex 1 to the Ordinance on the Control of Dual-use Chemicals (SR 946.202.21).

3.5 Operative paragraph 7

Assistance to States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions

Switzerland is willing to assist other States through capacity-building in particular in areas where it has relevant experience. Switzerland is notably active in the framework of the Chemical Weapons Convention, where it provides, for example, a computerized tool for declaration purposes, as well as the respective training to other States parties. Switzerland is also active in offering nuclear, biological and chemical protection capacity-building.

3.6 Operative paragraph 8

Subparagraph (a)

Promote the universal adoption and full implementation, and, where necessary, the strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons

Switzerland maintains that multilateral treaties are the cornerstone of international non-proliferation efforts and has consistently called upon all States to adhere to them without reservations. Switzerland calls upon all nuclear weapons possessors to ratify the Comprehensive Nuclear-Test-Ban Treaty and was also a strong supporter of the negotiations on a verification system under the Biological Weapons Convention.

Subparagraph (b)

Adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties

With respect to the implementation of international treaties, Switzerland abides by the principle that treaty obligations should be entered into only if they can be complied with. After entry into force, a ratified treaty becomes directly applicable under national law, provided that its provisions are specific enough.

Subparagraph (c)

Renew and fulfil their commitment to multilateral cooperation, in particular within the framework of International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes

Switzerland has been a member of IAEA since 1957. In 1978, it concluded a safeguards agreement to the NPT with IAEA. Conclusion of an additional protocol to the safeguards agreement was reached in 2005. Switzerland ratified the Biological Weapons Convention and the Chemical Weapons Convention in 1973 and 1995 respectively. It supports the above-mentioned organizations and conventions through active participation, with the aim of strengthening them and enabling them to fully attain their goals. Switzerland also supports these conventions by paying its assessed contributions fully and on time and by providing regular training courses to employees of the Organization for the Prohibition of Chemical Weapons.

Subparagraph (d)

Develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws

All relevant laws and international agreements must be published. The complete texts are available on the Internet. The export control authorities are in close contact with industry associations. Relevant companies are routinely informed about changes in legislation that may affect their business. Targeted awareness-raising campaigns are directed towards selected companies. Awareness-raising is principally directed towards two groups of businesses: companies whose products may be attractive to proliferators, and companies that have been observed to be approached by potential proliferators.

3.7 Operative paragraph 9

Promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical and biological weapons, and their means of delivery

Information on proliferation is routinely shared, both domestically and internationally, among the competent authorities. At the domestic level, there is the so-called Export Control Group, a permanent body composed of all the agencies concerned with counter-proliferation, such as the export control authorities, the police, the intelligence service, customs and others. At the international level, Government agencies maintain close relations with their respective counterparts, information is also shared in the annual information exchange meetings of the four export control regimes.

3.8 Operative paragraph 10

Cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials

Within the framework of strengthened regional cooperation, Switzerland concluded treaties on the cooperation of police forces with all its neighbouring countries, in order to safeguard mutual security interests, further develop close cooperation among police and border police, and counter transboundary threats and international crime effectively. Switzerland works in close cooperation with INTERPOL and has acceded to the Schengen/Dublin agreements of the European Union, which will enter into force for Switzerland on 1 November 2008.

4. Legislation relevant to the implementation of Security Council resolution 1540 (2004) in Switzerland:

Export control legislation:

- Swiss Federal Act on War Material of 13 December 1996 (War Material Act; SR 514.51)
- Ordinance on War Material of 25 February 1998 (War Material Ordinance; SR 514.511)
- Swiss Federal Act on the Control of Goods Usable for Civilian and Military Purposes and Specific Military Goods of 13 December 1996 (Goods Control Act; SR 946.202)
- Ordinance on the Export, Import and Transit of Goods Usable for Civilian and Military Purposes as well as Specific Military Goods of 25 June 1997 (Goods Control Ordinance; SR 946.202.1)
- Ordinance on the Control of Chemicals Usable for Civilian and Military Purposes (Dual-use Chemicals Ordinance; SR 949.202.21)

Customs

- Swiss Federal Customs Act of 18 March 2005 (Customs Act; SR 631.0)

Sanctions

- Swiss Federal Act on the Enforcement of International Sanctions of 22 March 2002 (Sanctions Act; SR 946.231)

Financial regulations

- Swiss Federal Act on Combating Money Laundering in the Financial Sector of 10 October 1997 (Money Laundering Act; SR 955.0)

Prevention of major incidents

- Ordinance on the Protection against Major Incidents of 27 February 1991 (Major Incidents Ordinance; SR 814.012) This Act is applicable to accidents involving both chemical or biological materials

Nuclear materials

- Swiss Federal Act on Nuclear Energy of 21 March 2003 (Nuclear Energy Act; SR 732.1)
- Ordinance on Nuclear Energy of 10 December 2004 (Nuclear Energy Ordinance; SR 732.11)
- Ordinance on Nuclear Safeguards of 18 August 2004 (Safeguards Ordinance; SR 732.12)
- Ordinance on Security Guards in Nuclear Facilities of 9 June 2006 (Security Guards Ordinance; SR 732.143.2)
- Ordinance on Security Clearance for Staff of Nuclear Facilities of June 2006 (Security Clearance Ordinance; SR 732.143.3)
- Swiss Federal Act on Protection against Nuclear Radiation of 22 March 1991 (Radiation Protection Ordinance; SR 814.50)
- Ordinance on Protection against Nuclear Radiation of 22 June 1994 (Radiation Protection Act; SR 814.501)

Biological materials

- Swiss Federal Act on Protection against Dangerous Substances and Preparations of 15 December 2000 (Chemicals Act; SR 813.1). This Act is equally applicable to chemical substances and to micro-organisms.
- Swiss Federal Act on the Control of Communicable Human Diseases of 18 December 1970 (Epidemics Act; SR 818.101)
- Swiss Federal Act on Genetic Engineering of 21 March 2003 (Genetic Engineering Act; SR 818.91)
- Ordinance on the Release of Organisms into the Environment of 25 August 1999 (Environmental Release Ordinance; SR 814.911)
- Ordinance on the Contained Use of Organisms in Closed Systems (Containment Ordinance; SR 814.912)
- Ordinance on the Notification of Communicable Human Diseases of 13 January 1999 (Notification Ordinance; SR 818.141.1)

- Ordinance on the Release of Organisms into the Environment of 25 August 1999 (Environmental Release Ordinance; SR 814.911)
- Ordinance on the Protection of the Workforce from Risks related to Exposure to Microorganisms of 25 August 1999 (SR 832.321)
- Swiss Federal Act on the Control of Animal Epidemics of 21 November 1984 (Animal Epidemics Act; SR 916.40)
- Ordinance on the Control of Animal Epidemics of 27 June 1995 (Animal Epidemics Ordinance; SR 916.401)
- Swiss Federal Act on Agriculture of 29 April 1998 (Agriculture Act; SR 910.1)
- Ordinance on Plant Protection of 28 February 2001 (Plant Protection Ordinance; SR 916.20)

Chemical materials

- Swiss Federal Act on the Protection against Dangerous Substances and Preparations of 15 December 2000 (Chemicals Act; SR 813.1). This Act is equally applicable to chemical substances and to micro-organisms.
- Ordinance on the Protection against Dangerous Substances and Preparations of 18 May 2005 (Chemicals Ordinance; SR 813.11)
- Ordinance on the Reduction of Risks in Handling Certain Particularly Dangerous Substances Preparations, and Objects (Particularly Dangerous Goods Ordinance; SR 814.81)
- Ordinance on the Control of Chemicals Usable for Civilian and Military Purposes (Dual-use Chemicals Ordinance; SR 949.202.21)

Transport

- Ordinance on Street Transport of Dangerous Goods of 29 November 2002 (Transport Ordinance; SR 741.621)

5. Implementation of Security Council resolution 1540 (2004): update on the Swiss matrix

Please refer to the spreadsheet in the annex to the matrix which provides the updates since September 2005.[a]

[a] The matrix mentioned in the present report was transmitted to the Secretariat and may be consulted at the Security Council Subsidiary Organs Branch.